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U.S. Treasury Department Expands its ‘Real Estate GTOs’ to Require Title Insurance Companies and Their Agents To Report the Ultimate Beneficial Owners of Entities Used To Buy Residential Real Estate in All-Cash Purchases in Six Metropolitan Areas, Including all of New York City, South Florida and Portions of California and Texas

On July 27, 2016, the Financial Crimes Enforcement Network of the U.S. Department of the Treasury (FinCEN) issued a press release announcing new Geographic Targeting Orders (GTOs) applicable to certain U.S. title insurance companies and their subsidiaries and “agents” (collectively, the Targeted Title Insurance Companies). The new GTOs go well beyond those that were initially issued in January 2016 that were geographically limited to certain residential real estate transactions in Manhattan and Miami-Dade County. The new GTOs require Targeted Title Insurance Companies to obtain information on the ultimate beneficial owners of certain entities buying residential real estate in six U.S. metropolitan markets.

The GTOs require the Targeted Title Insurance Companies “involved” in a Covered Transaction (as defined below) to:

- (i) report to FinCEN on an electronic Form 8300 within 30 days of the closing of a Covered Transaction the identity of the individual primarily responsible for representing (the Buyer Representative) any legal entity (*i.e.*, corporation, limited liability company, partnership or similar business entity, domestic or non-U.S.) that purchases (the Buyer Entity) residential real property located in the **Borough of Manhattan** for a purchase price of **US\$3 million or more**, residential property located in the **Boroughs of Brooklyn, Queens, the Bronx or Staten Island** for a purchase price of **US\$1.5 million or more**, residential property located in **San Diego County, Los Angeles County, San Francisco County, San Mateo County or Santa Clara County** (*i.e.*, San Jose),

California for a purchase price of **US\$2 million or more**, residential property located in **Miami-Dade County, Broward County, or Palm Beach County**, Florida for a purchase price of **US\$1 million or more**, or residential property located in **Bexar County, Texas** (*i.e.*, San Antonio, Texas) for a purchase price of **US\$500,000 or more** (each, a Covered Property) that is ***unfinanced and paid for, at least partially***, with currency, personal check, business check, cashier's check, certified check, traveler's check or money order (a Covered Transaction);

- (ii) record a copy of the Buyer Representative's driver's license or passport;
- (iii) report to FinCEN the identity of the Buyer Entity;
- (iv) report to FinCEN the identity of the ultimate beneficial owner, which is any individual who directly or indirectly owns 25 percent or more of the equity of the Buyer Entity (the UBO);
- (v) record a copy of the UBO's driver's license or passport;
- (vi) report to FinCEN the date of closing, the total amount transferred by currency and/or checks, the total purchase price of the Covered Property and the address of the Covered Property; and
- (vii) report to FinCEN information about the Targeted Title Insurance Companies.

If the Purchaser Entity is a limited liability company – which frequently is the case – the Targeted Title Insurance Companies must disclose the name, address and taxpayer identification number of all of its members. Although not discussed in the GTOs, it would appear that common law trusts would not qualify as Buyer Entities subject to being reported.

Effective Period

The FinCEN press release states that the GTOs are effective for six months, from Aug. 28, 2016 to Feb. 23, 2017.

Record-Keeping Obligation

Under the GTOs, Targeted Title Insurance Companies will be required to retain all records relating to compliance with the GTO for a five-year period from the last day that the GTO is in effect, including any renewals thereof. Thus, at a minimum, records will need to be kept until at least Feb. 23, 2022. The records should be stored in a manner such that they can be easily retrieved to respond to a law enforcement records request or compulsory legal process, including requests from FinCEN.

Payment with Personal Checks

The new GTOs specifically require reporting if a personal check is used, in whole or in part, to fund the purchase of a Covered Property. Because many purchases of real estate satisfying the jurisdictional and monetary thresholds are funded at least in part with personal checks, the new GTOs should result in the reporting from Targeted Title Insurance Companies of a significantly greater number of transactions.

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